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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In re Complaint of)
American Legal Foundation)
v.)
Columbia Broadcasting System, Inc.)
and its owned and operated)
television stations)
Concerning: CBS Program "The)
Uncounted Enemy: A Vietnam)
Deception")

FCC File No.

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COMPLAINT

The American Legal Foundation (ALF) hereby complains that the Columbia Broadcasting System, Inc. (CBS) and its owned and operated television stations have violated Commission policy by deliberately distorting, slanting and falsifying its news program entitled "The Uncounted Enemy: A Vietnam Deception" (broadcast January 23, 1982 from 9:30-11:00 P.M. EST) and failing to take the required remedial action to correct this distortion. ALF provides extrinsic evidence demonstrating that CBS intentionally edited the program to create false impressions, coached key interviewees on their testimony, knowingly presented false information, excluded all evidence inconsistent with their preconceived beliefs, and paid an interviewee without disclosing the payment. All of these actions were intended to, and had the effect of, deceiving and misleading the 20 million viewers of the program.

11. ARGUMENT

The Commission has repeatedly emphasized that the deliberate distortion, slanting or falsifying of news by licensees is "a most heinous act against the public interest" that will be dealt with in an appropriately severe manner. Hunger In America (CBS), 20 FCC 2d 143, 151 (1969). See CBS, Inc., Tennis Match, 67 FCC 2d 969 (1978); Letter to ABC, et. al., 16 FCC 2d 650 (1969); Commission En Banc Programming Inquiry, 44 FCC 2303 (1960). As the Commission recently stated:

The Commission has many times made its position clear that in fulfilling its obligation to operate in the public interest a licensee is expected to exercise reasonable diligence, supervision and control in order to insure that no matter is broadcast which will deceive or mislead the public.

WABC-TV License Renewal, FCC 82-561, p. 5, released December 23, 1982. The Commission will take all "appropriate action" against a licensee when "extrinsic evidence" of such distortion or falsification is brought to its attention. Hunger In America, supra; Letter To ABC, supra.

This complaint presents undisputed extrinsic evidence² of numerous instances of deliberate deception and slanting by CBS,

² The extrinsic evidence presented here is clearly sufficient to act as a basis for Commission action. The evidence in this complaint is largely derived from information contained in articles published in TV Guide and Accuracy In Media Report. These articles, particularly the one in TV Guide, use the testimony of "insiders" at CBS news and interviewees and the unedited transcripts as the basis of their assertions. This unquestionably is the type of extrinsic evidence the Commission requires and much less has served as the basis for a Commission investigation in the past. Hunger In America, supra; Letter To ABC, supra. See Mrs. J. R. Paul, 26 FCC 2d 571 (1969). Moreover, CBS has admitted the factual accuracy of many of the allegations contained herein. Broadcasting, July 19, 1982, p. 37.

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the network news personnel in their presentation of "The Uncounted Enemy: A Vietnam Deception", aired on January 23, 1982. The evidence presented here demonstrates that CBS had decided from the inception of the documentary that General William Westmoreland and then-Colonel Daniel Graham had conspired to falsify intelligence reports to mislead the President concerning the size of enemy forces in Vietnam and then slanted their documentary to support this preconceived notion. Their deceptive acts and distortions included: coaching witnesses, intentionally deceptive editing to create false impressions, knowingly presenting false information, excluding all evidence inconsistent with their "conspiracy" theory and paying an interviewee without disclosing the payment.

Complainant recognizes that the Commission is not the "national arbiter of truth" and will not intervene where it is merely alleged, without extrinsic evidence of slanting, that the "true" version of the events in question is different from that presented by a broadcaster. However, this is not the basis of our assertion that CBS violated Commission policy. We do not maintain that the Commission should act because Westmoreland did not, in reality, falsify intelligence reports - this question is not even addressed. We do maintain that the Commission should act because the extrinsic evidence - including the unedited transcripts of the documentary and the public statements of both interviewees and CBS News personnel - establishes that CBS

deliberately distorted and slanted its presentation of this event. It is the conduct of CBS, not Westmoreland, that is the sole concern of this complaint.

Finally, the only "appropriate action" for the Commission to take on this matter is to initiate a full-scale investigation of CBS' action in producing this documentary, preferably in the form of an evidentiary hearing. At a minimum, the Commission should thoroughly examine the 68-page report prepared by CBS Vice President Burton Benjamin detailing the results of his investigation into the allegations of TV Guide concerning this documentary, a report that CBS has steadfastly refused to make public. Any lesser action would be wholly inadequate and utterly meaningless. Referring the matter to CBS for response would simply produce from them the same face-saving, incomplete "explanation" they have already publicly released.

When this investigation demonstrates, as it will, that CBS has engaged in the deliberate distortion outlined below - and others as well, undoubtedly - the only appropriate sanction that the Commission can impose is the revocation of CBS's licenses for its owned and operated stations for insufficient "character qualifications." See WOKO, Inc. v. FCC, 329 U.S. 223 (1946). The seriousness of this sanction corresponds exactly with the seriousness and extent of CBS's betrayal of the public interest.

This is not a case where the news employees of a station, due to inadequate supervision, broadcast deceptive programming unbeknownst to the licensee. Here, licensee CBS, Inc.'s network news division was solely responsible for the production of the deliberately distorted program. The Commission has made it clear that when, as here, the licensee itself is responsible for the distortion, unlike the "inadequate supervision" case, a serious question is raised as to its qualifications to retain its license(s).³ Hunger In America, supra at 150; CBS, Inc., Tennis Match, supra at 975-76; Letter To ABC, supra at 657.

Further, CBS compounded its violation by broadcasting clips from the documentary that they knew to be false and misleading on CBS Morning News two days before the broadcast.⁴ (Appendix 4). They also ran advertisements for the show which repeated,

³ It should be noted in this regard that the very top CBS news personnel were directly responsible for the broadcast. Howard Stringer, Executive Producer of CBS Evening News, George Crile, Producer/Correspondent of CBS Evening News, and top CBS correspondent Mike Wallace.

⁴ George Crile and Mike Wallace repeated their charges against Westmoreland on this show. They ran the clip from the documentary where Col. George Hamscher is falsely and misleadingly identified as head of the MACV delegation to the National Intelligence Estimate Board meeting and the misleading Westmoreland clip concerning the infiltration rate. See, infra, p. 20-23; p. 30-32.

in the most inflammatory and defamatory language imaginable, the accusations which CBS knew to be false. (Appendix 5). See CBS, Inc., Tennis Match, supra, at 975.

Finally, the CBS network news management has violated Commission policy by failing to take adequate remedial action in responding to substantial complaints about its documentary's distortions and has engaged in a continuing coverup of the documentary producers' wrongdoing. This is a distinct and separate violation of Commission policy which, by itself, requires full investigation and disciplinary action.

The Commission has repeatedly stressed that licensees are obligated to fully investigate all serious charges of deliberate distortion or falsification that are brought to its attention. Letter to ABC, supra at 657, fn. 5; CBS Inc., Tennis Match, supra at 975; WABC-TV, supra at p. 5. This investigation must be a "thorough, conscientious one, resulting in remedial action where appropriate; efforts to coverup wrongdoing by his news staff would raise the most serious questions as to the fitness of the licensee." Hunger In America, supra at 151, fn. 6.

It is clear that CBS has flagrantly ignored its obligation to thoroughly investigate serious charges of distortion. Three days after the program aired, virtually every person who had firsthand knowledge of CBS's alleged "conspiracy" appeared at a press conference to deny the false accusations made by CBS and

cite specific instances of how CBS doctored their interviews and deliberately distorted the program. The men appearing included former Ambassador to Vietnam Ellsworth Bunker, Lt. Gen. Philip Davidson, chief intelligence officer in Vietnam, George Carver, head of CIA intelligence in Vietnam, Col. Charles Morris, a top MACV intelligence officer and the "conspirators" William Westmoreland and Daniel Graham. Westmoreland called upon CBS to correct their distortions and apologize.

On February 7, 1982, the New York Times published a letter from Walt Rostow, President Johnson's adviser on Vietnam, which showed the falsity of CBS's central accusation that the President had been misled by Westmoreland concerning the size of enemy forces. The Rostow letter reiterated testimony that he had already given to CBS in its 3-hour interview with him.⁵ In addition, the February 1, 1982 edition of the Accuracy In Media Report detailed a number of the specific deliberate distortions cited in this complaint and called upon CBS to rectify them. This and similar articles led to hundreds of letters being sent to CBS complaining about the documentary.

In response to this deluge of specific allegations of deliberate falsehoods and distortion by interviewees, people with

⁵ See, infra, p. 38-41.

direct personal knowledge of the controversy and published press accounts, CBS ignored its clear duty to investigate and did absolutely nothing. It was not until the May 22nd edition of TV Guide alerted its huge readership to many of the documentary's distortions cited in this complaint, that CBS news management took any steps to investigate the charges.

This "investigation" was not conducted by an objective outside agency, but by CBS Vice President Burton Benjamin. As noted above, CBS has repeatedly refused to release the "Benjamin report" detailing the results of this investigation. Instead, they issued a face-saving statement outlining the "conclusions" CBS had drawn from its investigation. While admitting the factual accuracy of many of TV Guide's allegations and conceding five violations of CBS News standards, they stood by "the substance of the broadcast" and labelled the TV Guide article "an exploitive attack on a serious, substantive journalistic effort."⁶ Nor has CBS taken any disciplinary action against the personnel responsible for this distorted documentary. George Crile, Mike Wallace and Howard Stringer have not received so much as a letter of admonition for their wrongdoing. In addition, despite repeated public promises to do so, it has not broadcast another program which would discuss the documentary and the "conspiracy" controversy.

⁶ Broadcasting, July 19, 1982, p. 37.

CBS's remedial action here stands in stark contrast to the proper action taken by ABC in response to charges of news falsification at their WABC-TV station, actions which militated the Commission's sanction for their staff's wrongdoing. Unlike CBS, ABC had impartial outside counsel conduct the investigation, "voluntarily brought this matter to [the Commission's] attention before it generally became known publicly"⁷ and took disciplinary measures including dismissing the responsible employees. WABC-TV, supra.

CBS, on the other hand, has taken none of these necessary remedial steps. Instead, it took no action until forced to by the TV Guide fallout and then it "stonewalled" and attempted to coverup its staff's actions by refusing to issue the "Benjamin report."⁸ These actions not only violate Commission policy but demonstrate CBS's cavalier attitude towards its public trustee obligations and the necessity of a Commission investigation.⁹

⁷ WABC-TV, supra at 5 (emphasis added).

⁸ On December 13, 1982, ALF sent a letter to CBS President Van Gordon Sauter requesting a copy of the Benjamin report. (Appendix 6). CBS has denied this request (Appendix 7).

⁹ Of course, the fact that General Westmoreland is currently suing CBS for libel should not in any way affect the Commission's disposition of this proceeding. The fact that one of the persons injured on a program is seeking redress in civil court cannot possibly deter the Commission from fulfilling its duty to oversee conduct of broadcasters who inflicted that injury. Moreover, the factual question to be decided in the civil case is completely different from the one at issue here. In the libel case, the threshold issue is whether CBS's allegations about General Westmoreland are true. As the Commission has repeatedly emphasized, its inquiry does not concern whether the broadcast's portrayal of events is "true" but whether the broadcaster has sought to deliberately slant its portrayal.

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